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ARE

SALARIES & RETIRING PENSIONS

TO BE

GOVERNED BY FAVOR OR BY JUSTICE?

AND

WILL THE BANKRUPTCY ACT WORK?

QUESTIONS DISCUSSED

IN A LETTER TO

C. M. NORWOOD, ESQ., MP.,

On the Debate in the House of Peers on Monday, July 26th last, on the Retiring Pensions of the Bankruptcy Commissioners and Officials,

BY

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GARTHMYL,
MONTGOMERYSHIRE,
NOVEMBER 1ST, 1869.

DEAR SIR,—

During the last Session of Parliament—when the new Bankruptcy Act was before the House of Commons, the Prime Minister (Mr. Gladstone), manifested a disinclination to admit the claims then made by the Bankruptcy Officials. But eventually a compromise was arrived at on the reasonable terms—that their salaries should be continued, on condition of their being bound to serve the public in other offices hereafter.

In the House of Lords the Bankruptcy Act was referred to a select Committee, which included nearly all the Law Lords, among whom the Bankruptcy Functionaries found warm advocates, who labored to limit, by close restrictions, an obligation, of which the existence could not be denied. Influenced—it may be presumed—by pressure and his own conciliatory disposition, the Lord Chancellor was eventually induced to propose a Clause (134), by which the Commissioners can only be compelled to accept Judicial offices, if of equal or greater salary than that of a Commissioner. Owing to the difference in the salaries they are thus protected from employment as County Courts Judges, to which they ought to have been made liable by the Act, on condition of their present incomes being continued to them.

It is not probable that it will be in the power of the Lord Chancellor to appoint them to Judicial offices of equal or greater emolument than those they now hold.

By the same clause the subordinate officials of the Bankruptcy Courts can be appointed only to offices "Created by this Act," in the gift of the Lord Chancellor, of equal or greater salary than those they now hold.

With the exception of the offices of the London Court, (which will, it is presumed, be filled by the existing officials) and a few other exceptions—there will be no offices "created by this Act," &c., as the entire Bankruptcy business in the Country will be transferred to the functionaries of a previously existing jurisdiction, viz,, the Judges and Registrars of the County Courts.

In other words, instead of qualifying, the clause alluded to (134), will altogether extinguish the legal right of the Government to the future services of the Bankruptcy Officials, and establish a mass of sinecures—differing in nothing from those which existed in this country when the public voice was powerless to check the most flagrant abuses.

As a result entirely at variance with the previous understanding, as well as with the intentions of the Government and of the Legislature, will require Legislative amendment in the next Session—I think it expedient to place before you the observations this letter contains.

Though the Amendments moved by them were ostensibly calculated only to limit the sphere of employment—the arguments of the noble and learned Lords, who espoused the cause of the Bankruptcy Officials—were substantially in favour of a claim on their part to absolute exemption from future services. I shall therefore address myself to that proposition.

I do not doubt, that in advocating those claims, they were influenced by a belief in their justice. But that is no reason why they should be accepted in silence by those who, on behalf of the public as well as of themselves, have a right to bring them to the test of free investigation.

The new Bankruptcy Act, in reality, is a measure which effects an Amalgamation of the Bankruptcy and County Courts jurisdictions.

On what ground or pretence can it be maintained that the duties of the amalgamated system should be thrown wholly on the officials of one of the two branches of which it is composed; and that the functionaries of the other branch should be allowed to retire and live on the public purse?

The Bankruptcy Commissioners and the County Courts Judges are both alike Barristers by profession. The former are quite as well qualified to try County Courts cases as the latter are to deal with Bankruptcy business. Having had to act for 21 years as Judge in Insolvency or Bankruptcy, and upwards of 22 years as Judge in County Courts cases, I can attest that the former is a much more unpalatable and irksome province of duty than the latter. I may add that the Registrars in Bankruptcy are also in many instances Barristers by profession, commonly in the prime of life; and on that account fitter, and under a greater obligation to discharge laborious public duties than the County Courts Judges, who, as a body, are more advanced in years.

As regards attainments—professional and general—there is in my opinion no difference between the Commissioners and the County Courts Judges—two bodies of gentlemen whom I regard with equal esteem and respect. On the score of age and long standing—professional and official—I can show that there are more numerous and more striking claims among the County Courts Judges than exist among the Commissioners.

One of the chief reasons assigned for this Act has been, that the County Courts Judges have given satisfaction and the Bankruptcy Courts have not. Consistently with this assumption—as an encouragement, I presume to the faithful discharge of public duties—our salaries have been fixed at a lower amount than those of the Commissioners, whose labours are to be thrown on us, in addition to our own. At the same time a right to a retiring pension for long service has been withheld from us, although that privilege has been conferred freely on those above us and below us—on the Judges of the Superior Courts most deservedly, on the Commissioners and their Registrars (to whom justice and liberality is also due,) on the Treasurers of the County Courts themselves, who (while we are excluded from practice) can follow any profession, and who have been discarded as useless by the Government itself, on schoolboys who can enter as "Civil Servants" in a department of mechanical drudgery, and leave

it at an age far earlier than that at which most of us have been appointed.

Doubtless retiring allowances may be a legitimate branch of the remuneration of Public Servants; but to give or withhold them with gross partiality is mere "jobbing" in effect, though it may not in every individual instance be so in intention.

On the present occasion I have not touched on the topics just referred to, under a deep or undue sense of personal grievance. A government of Economy may also be a government of Justice; and I feel assured that the House of Commons, which has always been the firm support of the County Courts, will not desire their Judges to be worse treated in any respect than other Servants of the Crown.

For this and other reasons, I did not join in the application—however legitimate it may have been—lately made by the Judges of the County Courts to the Chancellor of the Exchequer (Mr. Lowe), for an increase of their salaries; nor in that made by them in 1865 to Mr. Gladstone, which he liberally granted.

I have proposed through the press, chiefly in letters to Lord Brougham, and in other ways—almost every extension of our Jurisdiction, that has from time to time augmented our labors.

I may add that I have never sought to impose an increase of my official salary as a condition of such extensions. I have always thought that we ought to favor reasonable changes for the benefit of the public. But that is a very different thing from tolerating in silence a proposition for the emancipation from public duties of more highly paid public servants, at the expense of our labor and of the money of the public itself.

It must be obvious that if a difference be made at all, liberation from public duties should be granted in preference to those officials who are worse paid, and withheld from those who are more highly remunerated. But I contend for nothing more than equality in the division of labor between the functionaries of the amalgamated Jurisdictions.

Moreover I do not wish to see any difference observed in the treatment of the different classes of Bankruptcy officials. I desire sincerely that their full salaries should be accorded alike to all who are prepared with good faith to accept such duties as the Government may impose in return.

It has been urged on their behalf in the House of Peers, that the intention of the Government to require them so to do, has taken them by surprise; with what justice will be seen from the views expressed by Mr. Gladstone, and from the facts I am about to state.

In the year 1866, I addressed to Lord Brougham a published letter on Bankruptcy which contains a plan for a partial amalgamation of the Bankruptcy and County Courts. The letter—of which I have placed a copy in your hands—contains the following passages:

"I can not conceive anything more unwise *than a rash dismissal* "(*with the necessary retiring allowances*), *of the functionaries of the Bank-* "*ruptcy Courts*, which have been the subject of so many *abortive experi-* "*ments* in which the most eminent persons in the country have been in "error."

"Thanks to 'Reforms' carried out in the same spirit, within the "last 15 years, the Court of Chancery at present costs the country "about as much, in the shape of pensions, to the holders of abolished "offices—*commonly disgraceful sinecures*—as it has to pay for the services "of the Judges and Officers by whom the business of the Court is "done."

This letter was sent by me to all the Bankruptcy Courts in England, and most cordially and kindly received by the Commissioners and other Officials of those Courts, who returned valuable communications in reply, which are still in my possessson. About the same time I sent a copy—accompanied by a written communication urging the same views—to Sir Roundell Palmer, then in office, whose Bankrnptcy Bill was then pending. In reply, I received a very courteous letter, expressing his opinion of the importance of the question, and of the value he was kind enough to attach to the suggestions thus conveyed. In the following year, when his successor in office, Sir John Rolt, introduced his Bankruptcy Bill, Sir Roundell Palmer thus expressed himself in a debate on the subject on the 4th of June, 1867:—"With respect "to that part of the Bill which related to *Judicial arrangements*, "he had proposed last year to utilise the services of existing Officers "as far as he could, so as *to avoid saddling the Country with the cost of* "*compensation*. He thought it was reasonable that a period of fifteen "years service should entitle to full compensation, leaving other cases *to* "*a quantum meruit*. But he did not see why the services *should not be* "*made available so far as practicable for County Courts in the Country* "*Districts*. He was an advocate for making as much use of them as "possible, and for paying nothing that he could help out of the public "purse, excepting as a *quid pro quo*."

So much for the "surprise" alleged to have been practiced by the present Government. As already noticed, their noble and learned Advocates in the House of Peers did not formally claim for the Bankruptcy Officials a release from their obligation to serve the country hereafter. Their requisitions were confined to limitations and conditions, which in practice would render it impossible for the Government to enforce its fulfilment. Thus, Lord Chelmsford and Lord Penzance sought to confine the future appointments of each Bankruptcy functionary, to an office similar to that previously held by him, with duties to be discharged in the same place as that in which he had been heretofore employed. And Lord Romilly appears to have maintained, that the rejection of such restrictions would be a violation of the "rights of property." How far these high pretensions can be sustained, will be seen by a reference to the Clauses of the Bankruptcy

Act of 1849, under which the Bankruptcy Officials hold their appointments.

By Clause 9, the Lord Chancellor can enlarge a Bankruptcy district, and thus impose on the Officials additional labor to any extent he may think proper. By Clause 11 he can attach the Commissioners and Registrars in the Country to *such districts as he shall think fit*, and require sittings to be held in any places in such districts. In other words he can change and increase the labors of the Bankruptcy Officials, as he can those of the County Courts Judges, whose Circuits were completely remodeled about ten years ago. On that occasion Mr. Temple, Q.C., in his early life a leader of a Circuit, who holds the office of Chancellor of Durham, was compelled against his will to move from the Northamptonshire Courts to Salford a portion of Manchester. He is now about 80 years of age, several years older than any of the Commissioners.

Mr. Stansfield, Judge of the Halifax and Huddersfield Courts, is 78 years of age. He was a Commissioner of the old Bankruptcy Jurisdiction, which was abolished about 26 years ago—the period of the establishment of the present Bankruptcy system—which has in its turn been just abolished by the new Acts. He was Judge of the Courts of Requests in those Towns from 1841 till 1847, when he was appointed County Courts Judge by Lord Cottenham.

There are several other County Courts Judges about 70 years of age, and many between 60 and 70 who have held office since the County Courts were established by Lord Cottenham, viz., 23 years ago. The great majority are far advanced in life. At the period of the redivision above alluded to, my Circuit, which is now an immense one, was largely increased, and the number of Court towns included was raised from 12 to 16. It extends from the Welsh Coast to the English Border, and includes part of England itself. Its two extremities are about as far from each other as the Principality, in which they are situated, is from the Metropolis of London.

Nevertheless among the various extraordinary accusations that have lately been made against the County Courts Judges, is the charge that they do not live in their districts. Can any one tell me how I could reside in each of the sixteen districts of which the Midland Wales Circuit is composed? The truth is that we are Circuit Judges, having no manner of duty to perform in our various Circuit Towns, excepting on our Court days, which we are bound to fix three months before hand; and our engagements are manifestly incompatible with residence in any one place.

Does the circumstance that we have been required to travel continually in laborious circuits, and also to change our Circuits, while the Bankruptcy Commissioners—though equally liable—have not been compelled so to do—furnish a ground for the extraordinary pretension that they ought not to be employed, excepting in the precise places, in which they have hitherto resided? The Government of this Country

has commonly displayed a liberal feeling towards the holders of abolished offices; and in many instances, either from necessity or mere jobbing, no services have been exacted in return for retiring allowances. But can the claim to such an exemption—as a right—for a moment stand the test of justice or common sense?

That claim on behalf of the Bankruptcy Officials must stand or fall upon some general principle. *No general principle can be put forward in their favor unless it can be maintained that public servants have a right to object to all legislation, and to live as drones on their Country, in case an Act of Parliament should vary or extend their sphere of duty in the slightest degree.* Can such a proposition be listened to? Take for example the measure which has imposed on the learned Judges of the Superior Courts of Common Law, the duty of trying Election petitions —a duty most irksome to them. Take also the additions made almost yearly to the County Courts Jurisdiction, including those which will occur under the new Bankruptcy Act itself.

No distinction that will be accepted by the judgment of the country can be drawn between these instances, and the case of the Bankruptcy Officials.

I venture to anticipate that the following propositions will be found consistent with fairness to individuals, and with the best interests of the country.

1. The officials of both Jurisdictions, should be equally required to take a part in the labors of the amalgamated system of Bankruptcy and County Courts.

2. Should those labors not furnish employment for all, and should it also be impracticable to find employment for all in other departments of the Public service, a certain portion should be allowed to retire on full pensions permanently, or until the occurrence of vacancies.

3. The privilege of retirement should be accorded impartially to the Officials of both Jurisdictions, according to a standard founded on mixed considerations of length of service and age.

The arrangement I have described, while it would be just to individuals, would also be beneficial to the public, because active duties would thereby be thrown on younger men, and the retiring pensions would fall to the lot of the older public servants, who would not receive them for a great length of time.

I should rejoce to see gentlemen of the standing, combined with personal merit of Mr. Commissioner Holroyd and Mr. Commissioner Hill, together with the oldest of those County Courts Judges, who have held office from the commencement of those Courts, released on liberal terms. And I may repeat the wish already expressed that all the Bankruptcy Officials may be treated by the Government, not merely with fairness, but with generosity.

I can see no solid ground in reason or justice for the subtle differences that have been suggested, as regards their claims of various classes.

Personally, I should not benefit by the plan I have described, because, although my official standing (viz., nearly 23 years), is as high as that of any County Courts Judge, there are Commissioners and County Courts Jndges, to whom I am not superior in official standing, who are my seniors in age, which ought to turn the scale.

Larger and more comprehensive powers should be given to the Lord Chancellor and to other members of the Government, so that the Registrars and Official Assignees, &c., should be liable to employment in various public departments.

It will be seen that I have not now for the first time suggested that changes in the Bankruptcy Law, of which the results must be always doubtful, ought not to be attempted without precautions against the enormous expense, which the allowance of retiring pensions to the Bankruptcy Officials will throw on the Public Treasury. I feel myself entitled on the present occasion to repeat the expression of that opinion,

I do so without the least intention of disparaging the functionaries to whom I have alluded. On the contrary, I think it right to state, that I have pointed out in previous published letters, that the complaints against the Bankruptcy Commissioners have commonly been founded on a misconception of the extent of their powers, and on unreasonable requisitions and sanguine expectations, which no Law on the subject can fulfil.

I trust that we may be more fortunate in maintaining the public confidence, to which, however, I should be the last person to think that we possess a superior claim, And I should be blind to the lessons my own experience has taught me, if I hoped for a peculiar exemption on our part from unfriendly criticisms and ungenerous misinterpretations. No tribunal is likely to give much satisfaction in administering the affairs of ruined men—the victims commonly of rash speculation on the part of creditor and debtor alike. In a terse communication on my published letter to Lord Brougham on Bankruptcy, Mr. Commissioner Hill, while conveying his general concurrence, strongly expressed his special approval of a sentence in that letter to the effect—that for the reason just given, it is idle to expect too much from any Bankruptcy Law—an opinion highly valuable, from an experienced Commissioner, who was the friend and coadjutor of that great man in his various public labors for the good of his country, and of mankind.

The new Bankruptcy Act establishes the Office of "Chief Judge" in Bankruptcy. Under that title propositions of a most opposite nature have been at different times propounded. Under the new law he will have to perform some of the duties of the present London Commissioners, and other functions, which, according to my humble judgment are most incongruous, as being proper to be intrusted to officials, in some instances of a higher, and in other cases of a much lower position than that of a Commissioner. For example—he is to act as the Judge

of a Court of Appeal, and to frame "Rules and Orders" in Bankruptcy.

As to appeals, they are provided for by an existing machinery, and I have ventured in my humble pamphlets to contend that it is an evil and not a good—that there should be a right of appeal, (provided by legal pedants), on the most frivolous questions affecting the miserable dividends of Bankrupts—questions which should be summarily disposed of.

As to "Rules and Orders" in Bankruptcy, excepting in London they will henceforward exclusively apply to the County Courts. Hitherto each successive Chancellor since 1847 has wisely left the making of such "Rules" to five able County Courts Judges—a task which might have been safely entrusted to persons possessed of special experience, combined with common sense only—a task which, I believe, has been gratuitously performed. A Judge of a Superior Court of Common Law would be quite unfit for that task from want of special experience. I mean no disrespect. Our excellent and eminent Judges are not pretenders; they are the first to acknowledge that excellence depends on practice, and accordingly they have objected to sit on Election Petitions, on the ground that they have not been accustomed to try questions of fact without juries, which County Courts Judges are in the habit of doing, without that aid, in almost every case that comes before them.

When the new Bankruptcy Act was before the House of Lords, Lord Cairns pressed for the augmentation of the salary of Mr. Bacon, an eminent London Commissioner, on whom the appointment of Chief Judge will probably be conferred, and that Act assigns to the Chief Judge the rank and salary of a Judge of a Superior Court of Common Law, viz., £5,000 a year. This allowance, combined with an expensive staff, &c., will probably cost the Country more than £10,000 a year. I do not doubt that the gentleman referred to, fully merits that preferment. But I may observe that when Lord Westbury in 1861 introduced a Bankruptcy Bill—creating the office of Chief Judge—with much more extensive powers, and more important functions—the proposition was defeated by the Conservative Party in the House of Peers, on the motion of Lord Chelmsford. And that noble and learned Lord—though he expressed strong disapproval of the Bill in other respects—waived all other objections, in order more effectually to prevent the establishment of an office, which, he maintained, would prove a useless sinecure, that would cause enormous expense to the country. Lord Cairns himself within the last few years—when Chancellor of the Conservative Government—introduced a Bankruptcy Bill which contained no provisions for the establishment of the office of Chief Judge.

As in my letter to Lord Brougham on Bankruptcy, published in 1866, I ventured to maintain the same views as those expressed by Lord Chelmsford, I may be excused for remarking that the objections urged in 1861 derive overwhelming additional weight from the provisions of the new Law, which altogether transfer from the London Commissioner or

Chief Judge his most onerous and important function (viz., that of trying Criminal Charges against Bankrupts) to the Quarter Sessions.

The proposition of a Chief Judge was strongly pressed on the Commission of 1864 by an eminent member of the mercantile world, now in Parliament—(Mr. Morley). On what grounds and for what purpose will be seen from his answers, which I have given below:

Q. 4025: What powers would you give to the Chief Judge, assuming such an officer to be appointed, both as to decision of Law points, and in regard to punishments?

A. I would give *him the fullest power as to punishments, &c., &c.*

Q. 4026: Would you give to the Chief Judge the power of punishment *withow the intervention of a jury*?

A. The same as *the Judges in the Insolvent Debtors' Court* had, and all the more so because there is an appeal from the Court of Bankruptcy, which did not exist with regard to the Insolvent Debtors' Court.

When the County Courts Judges lately asked for an increase of their salaries, on the ground that they would have to perform the duties of the Commissioners as well as their own, they were met by a judicious reply, viz., "Wait until we can learn by experience what the increase in your labours will be." From a perusal of the statements and observations I am about to place before you, it will be seen that the maxims of a wise frugality might have been usefully applied to high and humble offices alike, and that the reply to the advocates of the Chief Judge might also have been "Wait until we see what his duties will be."

The claims of the gentleman likely to be chosen rest on his own merits; and no observations of mine are meant to cast reflections on one who is fit for the highest judicial appointment.

I should be the last to speak in terms of disparagement or disrespect of any of the noble and learned Lords, on whose observations I have commented—observations which I must ascribe to the influence of exparte representations and imperfect knowledge of the ruinous loss that the claims of the Bankruptcy Officials will, if granted, throw upon the country.

Among the chief objects the new Law was meant to accomplish, were two, viz., the infliction of severer punishments on dishonest Bankrupts, and encouragement to those of better principle, by holding out the prospect of a discharge from their liabilities—to debtors—who would stop in time, and save ten shillings in the pound for their Creditors. Those ends will not be attained.

The severe punishments for offences by Bankrupts, provided by the new Imprisonment for Debt Act, can not be inflicted, unless on a debtor who has been formally "adjudicated" a Bankrupt by a competent Court on the petition of himself, or of a Creditor. Now the new Law takes away the debtor's right to petition, and confines it to his creditors, who, as shown by the Returns, will hardly ever use it; and, unless the creditors consent, withholds a discharge, excepting in cases (also shown by the Returns to be a very small proportion), in which a dividend of ten shillings in the pound shall be paid. The new Law also abolishes Imprisonment for Debt, which deprives the worst class of debtors of all motives for petitioning if they could, as they com-

monly would care little for executions against their goods, which, should they possess any, they would, if sued, conceal or transfer by a fictitious sale to a relation or an accomplice.

As a general rule the most fraudulent debtors are to be found in that class which pays little or no dividend —a class which—for reasons ust explained—will commonly escape the punishments of the new Law for offences by Bankrupts.

Happily, it includes a clause—proposed by you—which gives a summary power to Courts of Imprisoning for a moderate period "unadjudicated" debtors for nonpayment, combined with ability to do so.

As regards Bankrupts of good character,—How are they to stop and save ten shillings in the pound for their creditors under the new Bankruptcy Act?

Under its provisions a debtor may shut his shop and stop his trade, but how can he save a dividend?

For example, a trader owes twenty thousand pounds, and has assets to the amount of ten thousand. He is sued by one or two creditors, who obtain judgments—take out executions and sell all his property at a depreciated value—which is the consequence of such sales, so that nothing will be left for the rest of his creditors. Under the present Law a debtor thus pressed can petition a Bankruptcy Court, which thereupon puts an end to actions—assumes the management of his estate—and equitably divides it among all to whom debts are due. But this can not be done under the new Bankruptcy Act, which, as already noticed, positively forbids a petition by a debtor, and confines the right to creditors, who will rarely exercise it, owing to the well-founded dread of responsibility, litigation, and costs, unaccompanied by any sure prospect of a dividend. I believe that in the small number of cases, in which a creditor has Petitioned, the motive has commonly been to extort in full the debt due to himself, to benefit an Attorney, or spite. In such cases the petitioner can rarely, as I think, have been influenced by a desire to promote the interests of the general body of the creditors. Why should he be allowed to proceed excepting for his own debt? The interest of Creditors as a body is that their debtor should not be made a Bankrupt, but that he should maintain his trade, and pay his debts in full. The highly estimable legal advisers of the Crown have by the new Law wisely rendered universally applicable to all debts the power—hitherto confined to the County Courts Judges—of ordering payment by instalments—a power which has proved highly beneficial to Debtors and Creditors alike. The right possessed by a Creditor to make his Debtor (if a trader) a Bankrupt on nonpayment of his debt in seven days after service of a "Debtor Summons" or Writ in Bankruptcy—is inconsistent with the benevolent provision alluded to, and has a tendency to neutralise its effect. Time is often vital to the workingman, owing to sickness and want of employment. Time is also often vital to a trader carrying on a perfectly sound business with ample capital —as for example, in the instance of a temporary depression in the value

of particular goods, It is best for the Creditors that time should—under such circumstances—be allowed in the discretion of a Court, and that it should not be at the option of any one sharp practitioner among themselves to withhold it. (See published Letter by the Author of these pages "Is Credit an Evil?")

There are doubtless instances in which a Creditor's Petition may be desirable, as for example in cases of collusion between an Execution Creditor, and a Bankrupt. Power should be given to Courts—in their discretion—to permit a Petition by a Creditor on reasonable grounds.

The commercial classes—carried away by flagrant cases of individual misconduct—have pressed on the Government remedies, of which the impracticable character is shown by this letter.

The entire abolition of all Bankruptcy relief, though it may be an inadmissible, would be a consistent and intelligible proposition. But the maintenance of that system of relief is obviously inconsistent with a denial of the debtor's right to petition for it.

It remains for me to point out the effect the late Acts will have on the business of the Bankruptcy Courts. I believe that it will be nearly annihilated, owing to the prohibition of debtors' petitions, the restriction of relief to cases in which ten shillings in the pound shall be paid, and the transfer of the criminal business to the Quarter Sessions.

Any one of those causes singly, would, I conceive, produce that result. What ground then at present can there be for creating a Chief Judge in Bankruptcy?

Harsh laws against debtors must, I think, defeat their own ends, and prove injurious to creditors for the following reasons.

1. I consider it certain that the chief check on Bankruptcy is the interest *of the debtor to avoid it, destructive as it is to his credit, position, and prospects in life.*

2. I believe that generally speaking in cases, in which Bankruptcy actually occurs, the only chance of a dividend the creditors possess depends on the good disposition of the Bankrupt himself. Punishments have a deterrent influence beneficial to the country; but they hardly ever confer any advantage on the creditors of the particular Bankrupt, on whom they may be inflicted. An unscrupulous debtor will commonly disregard risks, and from possessing a perfect knowledge of his own affairs—of which his creditors must generally know comparatively little—will frequently baffle them by fraudulent concealment or fraudulent sales, which they will find it difficult to prove by evidence, or to contest without heavy legal expenses, that it would be imprudent to incur.

3. On the other hand I conceive that the tendency of a Law, which abolishes Bankruptcy relief, must be to drive debtors possessed of property, on the first prospect of embarrasment, to sell, or conceal it, and abscond. It must be borne in mind that such a Law deprives them, not only of every chance of preserving, even a fragment of their capital—it deprives them also of any right to protection from past debts—without

which they cannot earn money, or borrow it from friends to commence business again.

By an Act passed in the age of George IV. a Commissioner had the power—in case of good conduct—to make an allowance to a Bankrupt for the support of his family, a humane Law, which, I believe, was calculated to benefit the creditors themselves.

I am not guilty of presumption in maintaining the opinions I have just expressed, which will be found to be essentially in unison with the views of an able and well-known commercial writer, who has devoted especial attention to the subject of Bankruptcy—Mr. William Hawes. See his "Observations on the Bankruptcy and Insolvency Bill of 1861," read before the Law Amendment Society, 25th February, 1861, and his Paper "On the Reform of the Law of Debtor and Creditor." See also the instructive Letters of Mr. Commissioner Abrahall.

I may add that the Bankruptcy Law of England—repealed by the new Acts—was the work of Lord Brougham, the great Law Reformer of his age.

My attention some time since has been drawn to the important evidence lately given by Lord Romilly on the proposed expenditure on the new "Law Courts Site," viz., one million six hundred thousand pounds, which he altogether condemns on the ground that, adverting to the pending changes in our Laws, no such structure may be required.

You will find the same views expressed in my published letter addressed to you, entitled, "Is Credit an Evil?" in which I thus ventured to refer to the subject—"To enthrone Justice in a Palace may "be a useful proceeding. But for the newly elected House of Com- "mons it may be a more appropriate achievement to do what "Socrates did for Philosophy, and Bentham and Brougham for the laws "of England—bring her down from the clouds to dwell among men."

I am happy to find that I no longer stand alone; but that my views are shared by one who eminently combines high rank and high legal position with a single-minded regard for the interests of the Country.

The funds proposed to be expended on Bankruptcy compensations, and expensive Law Courts, together with the sums squandered not many years ago on Chancery compensations, would suffice to establish local Courts on a basis, that would render Justice cheap and accessible through the length and breadth of the land.

In this communication I have repeated opinions expressed by me during the progress of the new Acts through Parliament, in published letters and in written communications to the Law Officers of the Crown. It is in no unfriendly spirit to them that I have addressed to you this letter—under the conviction that it is expedient to make plain my views at once, and before those measures shall come into operation.

I have in my previous published letters explained my opinions as to the principles on which the Bankruptcy Laws should be founded.

In my published letter on Bankruptcy to Lord Brougham, I have observed that the Heads of the Law see less of Bankruptcy through life than is seen in a single year by a Bankruptcy Commissioner, or Registrar, a County Courts Judge, or Registrar, or a Solicitor in large practice in Bankruptcy. And I might have added that those different classes possess also more complete information on the subject than most mercantile men, who, from want of legal knowledge, are apt to form a false conception of the nature of the remedies required.

To accept their proposals without examination is the act of a compliant physician, who allows his patients to prescribe for themselves. At the same time I may state my opinion, that there are not more valuable contributions to Law Reform than the writings of those mercantile authors—who have studied deeply the subjects of which they have treated—as, for example, Mr. Elliot, author of "Credit, the life of Commerce," and Mr. William Hawes. I may refer to the reason assigned (as already mentioned), for handing over the functions of the Bankruptcy Courts to the County Courts—viz,—the allegation that the latter are preferred by creditors on the ground of personal confidence. The validity of this reason will be judged of when I state that they possessed, previously to the new Bankruptcy Act, the option they are said to desire. For by Lord Westbury's Act B.A., 1861, sec. 109, the Creditors had the power to obtain the transfer of any Bankruptcy case to any County Court they might select. By the same Act, Sec. 4 and 5, the Lord Chancellor had power, as vacancies might arise, to amalgamate Bankruptcy and County Courts districts, *and to appoint new County Courts Judges to act in Bankruptcy.*

Under these wise and judicious clauses, creditors in Bankruptcy obtained at once all that they could reasonably ask, and the amalgamation of the two jurisdictions might have been effected gradually, as far as desirable, with a saving of expense to the country, because the Bankruptcy business in the rural districts might have been gradually merged in the County Courts, and the number of Commissioners and Officials of the Bankruptcy Courts reduced to some extent.

It would be a most absurd idea, that the powers—mental and physical—of the present County Courts Judges and Registrars are an inexhaustible fund, which may be recklessly employed in every wild scheme. Under the new Act, it is true the Bankruptcy business may, for a time be nearly extinct. But should the Law be again altered, so as to revive it, it will not be possible for the Judges of the County Courts, in important commercial districts, to fulfil the duties of the superseded Commissioners as well as their own. Either new County Courts Judges and Registrars must be appointed, or the old Officials must be employed again. From the above passage which I have marked in *italics*, it is plain that such was the opinion of Lord Westbury, who had bestowed a great deal of attention on the subject.

From a Return for the year ending the 11th day of October, 1868, it appears that in that year the Salaries of the Commissioners and

Officers of the Bankruptcy Courts amounted to £67,536 10s. 4d.; and that the Retiring Annuities under the existing Law amounted to £13,255 2s. 9d., making a total of £80,791 13s. 1d. The compensations to former Country Commissioners, employed previously to 5 and 6 Vic., Cap. 122, Sec. 58, amounted to £9,340 16s. 8d. These three items amount to £90,132 9s. 9d.

The amount that will be lost to the country by the new Bankruptcy Act—should it not be amended, may far exceed that sum; because, though some of the present Officials of the London Court will probably be employed; on the other side must be reckoned the cost of the office of Chief Judge in Bankruptcy, and of additional County Courts Judges and Registrars, &c. Such changes, as the late Bankruptcy Act has effected—if acceded to in other public departments—may bring Bankruptcy on the Public Treasury itself.

The following are the Salaries of the Bankruptcy Officials—independently of the Ushers and other inferior Functionaries: London Commissioner, £2,000; Country Commissioner, £1,800; Chief Registrar-£1,400; Registrar acting in London, £1,200; Registrar in the Country, £1,000; Taxing Master, £1,400; Official Assignee in London, £1,000; in the Country, £800.

The retiring pensions will be nearly equal to the salaries of all the County Courts Judges.

An eminent authority—Mr. Commissioner Holroyd—stated in his evidence in 1864 (see Report of Bankruptcy Commission, 1864), that the reason why the present Bankruptcy Courts are so expensive is because—while other Tribunals receive aid from the public treasury—those courts are supported by fees paid out of the estates of Bankrupts. The fees might have been swept away, had the grant of about £67,000 for retiring pensions been made to the Bankruptcy Officials for continuing to discharge their duties. Which would be the greater boon, an abolition of fees, or an indiscriminate change of officials? Can the Government afford another grant and pay for both objects? If not, how are the new officials, including our own Registrars, to be paid, excepting by maintaining the old fees?

The new Acts require various miscellaneous Amendments. Power should be restored to the County Courts of detaining absconding debtors in cases under £50, and of punishing, by a short imprisonment, offences by solvent debtors, such as a fraudulent removal of goods, &c., for which a bankrupt debtor is liable to two years' imprisonment, with or without hard labour, "unless the jury are satisfied that he had no intent to "defraud," a question on which he cannot, by law, give evidence for himself when tried as a criminal. Bankrupts, like other men, should be punished, not for their bankruptcy, in other words, their poverty, but for their offences, including drunkenness (and other extravagance) and rash speculation, see B.A. 1861, sec. 159 part 3, which the new Acts have repealed. To require them to pay debts they cannot pay, is mere absurdity and injustice.

It would be a mere illusion to suppose that the new Acts have transferred the functions of the Bankruptcy Courts to the County Courts Judges, excepting in name only, as the criminal cases, which constitute nearly all the important business of both jurisdictions, will pass from both to the Quarter Sessions. The result will be to give impunity to fraudulent bankrupts—for traders, if debarred from the summary local remedy of the County Courts, will remain passive. Influenced by dread of the cost, risk, and loss of time attendant on a prosecution at the Quarter Sessions, they will shrink from acting as "trustees" under the new law,-or from giving information as to acts of misconduct on the part of Bankrupts. For a long series of years, I had advocated, through the press, the fusion of the Bankruptcy jurisdiction in rural districts with the County Courts, on the ground that fraudulent bankrupts will not be opposed, unless in the districts in which they reside. Creditors usually unwilling to move will be even more reluctant to prosecute at the Quarter Sessions, than to attend a distant Court of Bankruptcy.

Thus it will be seen that there is no substantial ground for the expectation held out—I doubt not, quite sincerely—in Parliament that the new Law will confer on the country a local administration of the Law of Bankruptcy by County Courts Judges, a proposition which we cannot prudently accept in silence. In self vindication we are bound to point out that the success or failure of the new Acts will not rest with us.

By the Imprisonment for Debt Act, Clause 16, when a County Courts Judge is satisfied by a report of the Trustee (*i.e.*, the Assignee), or by the representation of a Creditor, &c, of a Bankrupt—that he has been guilty of an offence under the Act—the Judge shall, in case he may think there is a reasonable probability of a conviction, order a prosecution for the offence. In other words, he can merely commit for trial, and is required to do so without evidence on oath, on the representations of Trustees and Creditors not qualified to place a proper case before him, which is the province of an Attorney. In truth the function thus imposed on him is that of an Attorney rather than that of a Judge. It will scarcely be credited that the duties of the so called Chief Judge in Bankruptcy in criminal cases are the same. That high functionary can merely commit a Bankrupt—on the statements of Creditors—to the Quarter Sessions. Is it to be tolerated that the money of the Country is to be thus wasted? And can any reason whatever be assigned for so doing in London, and not in the Provinces?

Charges under Bankruptcy Acts—as they commonly involve subtle technicalities, should be tried by Judges who have had a legal education. Has it ever been really understood by those gentlemen who, in 1864, wished to transfer such charges to a Judge of high rank, that they will pass under the New Acts from the Commissioners and County Courts Judges to the Justices of the Peace and the Juries at Quarter Sessions? I do not, in a general sense, call in question the value of the services of the County Magistrates.

I have shown in my letter on Bankruptcy to Lord Brougham, that the objections made in 1864 by several commercial witnesses to the conduct of the Bankruptcy Commissioners were founded on errors of law. The Bankruptcy Jurisdiction is proper to be administered by Judges of the rank of Bankruptcy Commissioners and County Courts Judges. To hand it over to country magistrates, or to transfer it to Judges of the Superior Courts is equally unreasonable.

Previously to 1861 there existed in the County Courts a Local Jurisdiction in Insolvency, established by Lord Cottenham, which was partly abolished by the Act of 1861, and which the two new Acts have wholly swept away. Those changes, though well intended, are reactionary. As regards criminal, as well as civil proceedings, Suitors, in ordinary cases unless they can obtain summary and inexpensive remedies, will altogether avoid Courts of Law. It would be a great mistake to assume that a transfer of the Bankruptcy Jurisdiction to the County Courts must necessarily be advantageous. This must depend entirely on circumstances. I much prefer a separate Bankruptcy Court in a populous Commercial district that would afford sufficient employment for one. The grounds on which I have maintained that it is desirable that the County Courts should have jurisdiction in rural districts is because the Judges of those Courts have already to visit those districts periodically—which will render it convenient to the Suitors and economical to the Government—that they should at the same time dispose of Bankruptcy cases. But the transfer will not be productive of economy, or of any other advantage, but of a great waste of public money, and of public time, unless the Bankruptcy business be made to harmonise with the general business of our Circuits of which in Country neighbourhoods it will form a comparatively small portion.

This I have fully explained in my published letter to Lord Cairns, when Lord Chancellor, on your useful Admiralty Jurisdiction Act.

It is with much regret that I have dissented on several points from the present Legal Advisers of the Crown, whose responsibility for the Bankruptcy Act was fully shared by the House of Commons—so rich in sound acute, and learned members of the Legal Profession, and also by the Lords' Committee, composed almost entirely of Law Lords—whose eminent qualifications will not be disputed. But the explanations contained in this letter are due to the Public—and for the reasons above stated, they are also due, as an act of Justice, to the Body to which I belong.

Grave as are the defects of the new Bankruptcy Act, the temporary inconveniences they may occasion will, in my judgment, be of inferior moment, compared to the advantages the country will derive from the adoption by the Lord Chancellor and the Attorney General of your clause, which subjects dishonest debtors to imprisonment on proof of ability to pay. The Bankruptcy Law may be again revised, for errors of legislation may be retrieved at a future period.

But the gratuitous sacrifice of a large amount of public money cannot be retrieved, and *if submitted to in this instance, will prove fatal to the contemplated object of securing a cheaper and better administration of justice.* Law Reform in our days essentially *consists in the introduction of economical means of redress.* The rules of Law and of evidence in the higher Courts, and in County Courts, are the same.

Bentham's doctrine—that the expenses of Courts of Justice should be borne by the Government—has never been unreservedly accepted by Statesmen, who cannot be expected to submit to the double burden, of useless sinecures and of useful and necessary offices at the same time.

It should be distinctly borne in mind that the pensions awarded to the Bankruptcy officials will not fall on the Public Treasury until such time as they shall be permitted to retire from office. In other words *so long as they shall perform their present duties*, their salaries will continue to be paid out of the fees of the Bankruptcy Courts. *They will not fall on the Country until they shall cease to serve it.*

During the last twenty years, our judicial establishments have been largely and progressively increased, which tends to render indispensable—adherence to the maxims of a reasonable economy—which cannot under any circumstances be safely abandoned. On the ground just alluded to, it has become more imperatively necessary that the Superior Courts both of Common Law and Equity, should be relieved of all business, excepting cases of great difficulty and importance, by an extension of the County Courts jurisdiction. That extension, as I have often pointed out, will serve not merely to render justice cheaper to the suitors, but also cheaper to the country, as the salaries of the Judges and officials of that jurisdiction are very much lower than those of the functionaries of the Superior Courts. There is no difference in the legal principles in cases of simple contract debt, whether involving fifty pounds or five hundred. Lord Westbury's County Courts Equity Jurisdiction Act has, I feel convinced, answered admirably, and its provisions should be widely extended.

To squander public money on costly antiquated systems, or on fanciful projects, is not less injurious to the country than to expend it in gross corruption.

It is now nearly fourteen years ago since I published an explanation of the nature of the sinecures created by changes at that time in progress in the Court of Chancery—changes similar in character to the alterations in the Bankruptcy system which have been discussed in these pages.

See Popular Proofs of the fallacy of the present Government plans for the Reform of the Superior Courts, and of the unjust application of the Public Taxes, on which they are founded, &c., &c. In a letter to Lord Brougham and Vaux, by Arthur James Johnes, Esq., Judge of the County Courts. London: Stevens and Norton, 26, Bell Yard; and Wildy and Sons, Lincoln's Inn Archway.

From a perusal of the letter referred to, and from other sources of information, it will be seen that, as regards both the Chancery and the Bankruptcy Courts the country has been again and again burdened with a mass of sinecures which have been periodically renewed, so that

the Public Treasury is never relieved from the unnatural loss thus inflicted. For example, I may notice (see page 15 above) that the retiring pensions, consequent upon a former change in the Bankruptcy Laws under 5 and 6 Vic., cap. 122, have not yet run out, and that they still amount to upwards of £9,000 in addition to the enormous fresh burden imposed by the new Act.

The various projects above discussed for extravagantly wasting the money of the country, *will demand the prompt and energetic intervention of the Government and of Parliament at its first meeting.*

I must now bring this letter to a close, and in so doing I feel assured that its contents will be weighed, both by you and by the public, in a calm and unprejudiced spirit.

Happily, we live in an age in which no names, however honorable —no authorities, however eminent—will be accepted blindly as guides on any subject on which the people of this country can, through the medium of a free press, form a just and impartial judgment for themselves.—I have the honor to be, Dear Sir,

Yours very faithfully and sincerely,

ARTHUR JAMES JOHNES.

C. M. NORWOOD, Esq., M.P.

NOTE.—The author of the previous pages has published among others the following letters—

"Should the Law of Imprisonment for Debt in the Superior Courts be abolished or amended?" In a letter to Lord Brougham, 1868.

"Consequences of the Government Measures now pending on Bankruptcy and Imprisonment for Debt." In a letter to Sir R. P. Collier, Q.C., M.P., Attorney General, 1869.

"Is Credit an Evil?" In a letter to C. M. Norwood, Esq., M.P., 1869.

"Which are in fault, the Bankruptcy Laws of England or the Courts which administer them?" In a letter to C. M. Norwood, Esq., M.P., 1869.

Publishers: WILDY & SONS, Lincoln's Inn Archway, W.C.

I subjoin the following noble passages from a letter to John Stuart Mill, Esq., M.P. for Westminster, by Mr. Commissioner Abrahall, published in 1866, in allusion to the propositions which the late Acts have legalised, viz., Abolition of Imprisonment for Debt, combined with a destruction of Bankruptcy relief, as regards future earnings.

"To compel a man after the surrender of every thing he is worth—reduced to "hopeless penury—with broken health probably, and dejected spirits, (sad dis- "couragements), to work for the exclusive benefit of others, however wronged by his "imprudence, and therefore with even a strong apparent claim to his services, "would be an oppressive law, one early effect of which must be to replenish the "workhouse, if to relieve the gaol, and to enable exasperated Creditors to gratify "their revenge at the expense of the public."

* * * * *

"The revival of what bears so strong a resemblance to the rigour of a law—happily "obsolete—would scarcely be in harmony with advanced civilization, or agreeable to "the true spirit of Christianity."

END OF
TITLE